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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY _____

6 UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT ARIZONA
8 PHOENIX DIVISION

10 Jason Crews,
11
12 Plaintiff,
13 vs.
14 Health Insurance of America, LLC,
15 And
16 Vincent Nocera
17 Defendants.

Case No.: **CV24-01304-PHX-SMM**

Complaint for Violations of:

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C. §227 ET
SEQ.]

DEMAND FOR JURY TRIAL

28 ///
COMPLAINT- 1

COMPLAINT

Preliminary Statement

1
2
3 1. “When it comes to robocalls, you can only call those who, like Blondie, have
4 said, “Call me. Call me on the line.” If you call people who haven’t opted in , then you face
5 liability under the Telephone Communications Protection Act.” *Perrong v. Bradford*, 2024 WL
6 2133801, at *1 (E.D. Pa. May 13, 2024).

7 2. Plaintiff Jason Crews (“Plaintiff”) brings this action under the Telephone
8 Consumer Protection Act (“TCPA”), 47 U.S.C § 227, a federal statute enacted in response
9 to widespread public outrage about the proliferation of intrusive, nuisance calling practices.
10 See *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

11 3. The Defendants in this action Health Insurance of America, LLC and Vincent
12 Nocera orchestrated placing at least four illegal telemarketing calls using an Automated
13 Telephone Dialing System (“ATDS”) to a number assigned to a cellular service which was
14 included on the national Do-Not-Call List.

15 4.Plaintiff never consented to receive such messages.

Parties

16
17 5.Plaintiff Jason Crews (“Crews”) is and was a resident of Maricopa County, Arizona
18 at all relevant times, and a resident of this District.

19 6.Defendant Health Insurance of America, LLC(“HIA”), incorporated in Florida,
20 doing business as Health Insurance of America, “The Market Place” , “Health and Human
21 Services”, “Health Enrolment Center”, “Comprehensive Health”, and is in the business of
22 selling health insurance plans.

23 7.Defendant Vincent Nocera (“Nocera”), a resident of Palm Beach County, Florida,
24 was at all times relevant the owner and manager of HIA who directed and authorized the
25 illegal calls complained of herein.

26 8.Defendant Demetrius Jones (“Jones”), a resident of Polk County, Florida, was at
27 all times relevant an employee of HIA who directly participated in the violative phone calls
28 complained herein.

Jurisdiction

9. The Court has federal question subject matter jurisdiction over these TCPA claims: *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012).

10. The Court has specific personal jurisdiction over the Defendants because the defendants caused the events complained herein to occur in Arizona out of which the TCPA claims arose, and the defendants had minimum contacts with Arizona to justify assertion by an Arizona court of personal jurisdiction, *Meyers v. Hamilton Corp.*, 693 P.2d 904 (Ariz. 1985). Defendants intentionally called or caused Plaintiff's number to be called by dialing an Arizona area code at least four times within a twelve month period to advertise their services despite Plaintiffs number being listed on the national do not call registry in violation of the TCPA. Additionally HIA and their representatives are licensed to sell insurance by the State of Arizona.

Venue

11. The venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District, as the calls to Plaintiff were placed into this District.

The Telephone Consumer Protection Act

8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the automated calling industry. In so doing, Congress recognized that "[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy[.]": Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

9. Under the TCPA, an individuals such as Nocera may be personally liable for the acts alleged in this Complaint pursuant to 47 U.S.C. § 217 of the TCPA, which reads, inter alia:

[T]he act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as of that person. 47 U.S.C. § 217 (emphasis added).

10. In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 27 FCC Rcd. 1830, 1844 ¶ 33 (2012) (footnote and internal quotation marks omitted). FCC regulations “generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995).

11. The FCC confirmed this principle in 2013, when it explained that “a seller ... may be held vicariously liable under federal common law principles of agency for violations of either 5 section 227(b) or section 227(c) that are committed by third-party telemarketers.” In the Matter of the Joint Petition Filed by Dish Network, LLC, 28 FCC Rcd. 6574, 6574 ¶ 1 (2013). 22. Under the TCPA, a text message is a call. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 – 52 (9th Cir. 2009).

12. When considering individual liability under the TCPA, other Courts have agreed that an officer or individual involved in the telemarketing at issue may be personally liable under the TCPA. See, e.g., *Jackson Five Star Catering, Inc. v. Beason*, 2013 U.S. Dist. LEXIS 159985, *10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.”) (cleaned up) and *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415-16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

13. Nocera personally participated in the complained-of actions by personally directing and authorizing the scripting and selecting of calls to be made, selecting, and orchestrating the calling strategy, including by choosing to use pre-recorded calls.

Factual Allegations

14. To promote their services Defendants also relied on the use of ATDS systems.

15. Plaintiff had no prior business relationship with Defendants.

16. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

17. Defendant Nocera is a “person” as defined by 47 U.S.C. § 153(39).

18. The phone number (602) 295-XXXX (“Cell Number”) belongs to Plaintiff.

19. The Cell Number has been on the Do-Not-Call registry since November 7, 2006.

20. Despite this registration, Defendants placed the calls summarized in the following table with an Automated Telephone Dialing Systems (“ATDS”).

Date	Time	Caller ID
12/1/2023	10:15 am	(602)381-8133
12/04/23	7:33 am	(623)600-4475
12/04/23	11:04 am	(623)600-4475
4/16/23	1:52 pm	(602)898-5660

21. The Cell Number is assigned to a cellular phone used exclusively for personal residential purposes.

22. Plaintiff did not consent to receive telephone calls via ATDS.

23. The Cell Number is not associated with a business.

Calls to Plaintiff

24. On or about April 16, 2024 at 1:52 pm, Plaintiff received a call presenting caller ID (602)898-5660.

25. Plaintiff was greeted by an individual who identified themselves as James from “the Health Enrolment Center”.

26. Because Plaintiff believed he had received several other similar phone calls in the past and was unable to ascertain the identity of the callers he provided his personal information to James.

27. James pitched health insurance plans.

28. After confirming Plaintiff’s personal information, and that he was a resident of Arizona James transferred Plaintiff to an individual who identified himself as Benjamin Foster (“Foster”), a “senior supervisor”.

1 29. Foster reconfirmed Plaintiff's personal information, and that he was a resident
2 of Arizona.

3 30. Foster then transferred Plaintiff to an individual who identified himself as
4 Demetrius Jones.

5 31. Upon information and belief this individual is Defendant Jones.

6 32. Jones confirmed Plaintiff's personal information and location in Arizona.

7 33. Jones pitched health insurance plans from Banner Aetna.

8 34. Jones refused to identify the name of his employer, but provided his national
9 producer number 17953229.

10 35. Jones provided his call back number of 888-477-3234 with an extension of 318.

11 36. In a subsequent call back to that number, HIA's employee's refused to identify
12 the name of their company.

13 **Defendants' Use of an ATDS**

14 37. HIA's called frequently and from various different numbers.

15 38. HIA's representatives used the identical or nearly identical scripts.

16 39. HIA's representatives purposefully attempted to conceal the identity of their
17 company.

18 40. HIA's representatives solicited services did not target Plaintiff individually but
19 rather targeted "the HOMEOWNER".

20 41. For these reasons, Plaintiff believes the telemarketers used an ATDS to generate
21 leads for Defendant's debt relief services.

22 42. The calls were conducted using an Automatic Telephone Dialing System
23 (ATDS). As the Supreme Court recently clarified, the key feature of an ATDS is the
24 capacity to store numbers to be called using a random or sequential number generator or to
25 produce numbers to be called using a random or sequential number generator: *Facebook, Inc.*
26 *v. Duguid*, 141 S. Ct. 1163, 1167 (2021).

27 43. The Third Circuit recently clarified that "Congress envisioned a broad
28 understanding of 'equipment'" that constitutes an ATDS. It also clarified that the analysis

1 of whether an ATDS was used in violation of the TCPA centers around “whether the
2 Defendants employ[s] [ATDS] capacities to make automated calls”: *Panzarella v. Navient*
3 *Sols., Inc.*, 37 F.4th 867, 873, 878 (3d Cir. 2022). In so doing, it held that Congress intended
4 to “ban all autodialed calls” because Congress “found autodialer technology to be uniquely
5 harmful”: *Id.* at 879 (cleaned up).

6 44. In enacting the ATDS prohibition, the Third Circuit cited favorably to
7 Congressional understanding “that telemarketers could transform ordinary computers into
8 autodialers through minor and inexpensive modifications,” including by “relying on
9 computerized databases containing telephone numbers during their dialing campaigns”: *Id.*
10 at 880 (cleaned up). The Third Circuit held that, in passing the TCPA’s ATDS prohibition,
11 Congress intended to remedy the problems caused by callers using computer software to
12 dial numbers randomly or sequentially from a list or database: *Id.*

13 45. The system(s) that Defendants used to place the calls to Plaintiff is/are an
14 ATDS because it would be illogical to dial a number manually, have Plaintiff answer the
15 phone, and only then connect Plaintiff to a human being.

16 46. Audible pauses, clicks, and beeps are hallmark indicia of ATDS systems. This
17 supports the inference that Defendants used an ATDS, such as one that “use[s] a random
18 [or sequential] number generator to determine the order in which to pick phone numbers
19 from a pre-produced list”: *Facebook*, 141 S. Ct. at 1171 n.7.

20 47. Other courts have held, post-Facebook, that allegations similar to those herein
21 of the absence of a relationship between the parties, and the random nature of the
22 automation device (such as the ability to randomly generate caller ID numbers), are all
23 indicia of use of a random or sequential dialing device. This gives rise to the inference at the
24 pleadings stage that an ATDS was used to make the calls: *Camunas v. Nat’l Republican*
25 *Senatorial Comm.*, No. 21-1005, 2021 U.S. Dist. LEXIS 100125 at *11 (E.D. Pa. May 26,
26 2021).

27 48. No facts exist here to support the conclusion that Defendants was calling from
28 a curated list of his past customers. In contrast to a company that dials calls en masse to

multiple individuals from a list of telephone numbers (as here), a company that calls its existing customers utilizing an imported customer list does not place calls using an ATDS. Such calling uses a database targeting existing customers' information rather than computer-generated tables or lists of individuals to be called: *Panzarella*, 37 F.4th at 881–882.

49. Plaintiff is ignorant of the exact process by which the system(s) used by Defendants operates other than by drawing the reasonable inference and alleging that the system(s) stores or produces telephone numbers randomly or possibly sequentially based on the facts ascertainable from the calls Plaintiff received, as outlined above. Indeed, as at least one district court explained, “The newly clarified definition of an ATDS is more relevant to a summary judgment motion than at the pleading stage”: *Gross v. GG Homes, Inc.*, No. 3:21-cv-00271-DMS-BGS, 2021 WL 2863623, at *7 (S.D. Cal. July 8, 2021); accord *Miles v. Medcredit, Inc.*, No. 4:20-cv- 01186-JAR, 2021 WL 2949565 (E.D. Mo. July 14, 2021).

Defendants’ Conduct Was Knowing and Willing

50. Defendants intentionally called Plaintiff multiple times in order to advertise their services to Plaintiff.

51. Defendants knew their actions were in violation of the TCPA and willfully continued their conduct calling Plaintiff multiple times despite the registration of his number on the National Do-Not-Call List.

Nocera’s Personal Liability

52. Defendant Nocera personally participated in the calls at issue because Nocera personally directed the calls to be transmitted throughout the United States including numbers with Arizona area codes of which he knew were likely to belong to individuals, such as Plaintiff, who reside there.

53. Nocera is the principal officer of Defendant HIA.

54. Nocera closely holds Defendant HIA and is intimately involved in all decision making and legal activities of Defendant HIA.

55. Nocera made the decision to hire agents such as Defendant Lopez who are licensed in Arizona, approved of training employees such as Lopez on the use of proprietary

1 technology, and directed his employees to use the technology with the intention of breaking
2 state and federal laws.

3 56. Defendant Nocera has direct and personal involvement in and ultimate control
4 over every aspect of Defendant HIA's wrongful conduct that violated the TCPA, and/or
5 directly controlled and authorized this conduct.

6 57. Defendant Nocera at all times relevant to this Complaint acting alone or in
7 concert with others, formulated, directed, controlled, had the authority to control, or
8 participated in the acts and practices set forth in this Complaint,

9 58. There is precedent holding corporate officers personally liable when they
10 participate in the alleged actions: "If the officer directly participated in or authorized the
11 statutory violation, even though acting on behalf of the corporation, he may be personally
12 liable. See *United States v. Pollution Serv. Of Oswego, Inc.*, 763 F.2d 133, 134-135 (2nd
13 Cir.1985) The "well-settled" tort rule provides that "when corporate officers directly
14 participate in or authorized the commission of a wrongful act, even if the act is done on
15 behalf of the corporation, they may be personally liable." *General Motos Acceptance Corp.*
16 *v. Bates*, 954 F.2d 1081, 1085 (5th Cir. 1992). The Fifth Circuit has elaborated that "the
17 thrust of the general [tort] rule is that the officer to be held personally liable must have some
18 direct, personal participation in the tort, as where the defendant was the 'guiding spirit'
19 behind the wrongful conduct....or the 'central figure' in the challenged corporate activity."
20 *Mozingo v. Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985) (Citing *Escude Cruz v.*
21 *Ortho Pharmaceutical Corp.*, 619 F. 2d 902, 907 (1st Cir.1980)) (Citing *Texas v. American*
22 *Blastfax, Inc.*, 164 F. Supp. 2d 892 (W.D. Tex. 2001) Quoting *Texas v. American Blastfax*:
23 The Court finds the above principles applicable to the TCPA that is, an officer may be
24 personally liable under the TCPA if he had direct, personal participation in or personally
25 authorized the conduct found to have violated the statute, and was not merely tangentially
26 involved. Individuals who directly (and here, knowingly and willfully) violate the TCPA
27 should not escape liability solely because they are corporate officers. As the State persuasive
28 argues, to hold otherwise would allow the individual defendants to simply dissolve Blastfax,

1 set-up a new shell corporation, and repeat their conduct. Congress surely did not intend to
2 permit such a result in passing the TCPA. To be clear, the Court finds Greg and Michael
3 Horne were the “guiding spirits” an the “central figures” behind the TCPA violations. They
4 were the two persons who controlled all of Blastfax’s day-to-day operations. They both had
5 direct, personal involvement in and ultimate control over every aspect of Blastfax’s wrongful
6 conduct that violate the TCPA, and/or directly controlled and authorized this conduct. And
7 they did so with their eyes and pocketbooks wide open. After October 5, 2000, Greg and
8 Michael Horne had good reason to believe they were running a business that violated the
9 TCPA. On February 9, 2001, they knew they were. Yet they continued to direct their
10 company to send unsolicited intrastate fax advertisements. This is far more than a simple
11 derivative liability case. Accordingly, the Court *899 holds defendants Greg and Michael
12 Horne are jointly and severally liable with Defendant Blastfax, Inc., for all TCPA damages in
13 this lawsuit.” Texas v. American Blastfax, Inc., 164 F. Supp. 2d 892 (W.D. Tex. 2001).

14 59. The Same Court held that corporate officers were also personally liable for
15 DTPA violations; The State contends Greg and Michael Horne are personally liable for any
16 DTPA damages because they were solely responsible for the violating conduct.For the
17 same reasons discussed in finding the individual defendants personally liable under the
18 TCPA, the Court agrees. See, e.g., Barclay v. Johnson, 686 S.W.2d 334, 336-37 (Tex. Civ.
19 App.-Houston [1ST Dist.] 1985, no writ) (finding personal liability for corporate officer in
20 DTPA misrepresentation claim, based on general rule that “a corporate agent knowingly
21 participating in a tortious or fraudulent act may be held individually liable, even though he
22 performed the act as an agent for the corporation.Accordingly, the Court finds
23 defendants American Blastfax, Inc., Greg Horne and Michael Horne are jointly and severally
24 liable for \$6,000 in damages for their violations of the DTPA.” Texas v. American Blastfax,
25 Inc., 164 F. Supp. 2d 892 (W.D. Tex. 2001).

26 60. Defendant Nocera is the CEO of HIA and controls the day-to-day operations of
27 HIA and directs his employees, agents, salespersons, and solicitors to make TCPA-violating
28 phone calls.

75. A defendant may be held vicariously liable for Telephone Consumer Protection Act (TCPA) violations where the plaintiff establishes an agency relationship, as defined by federal common law, between the defendant and a third-party caller. Telephone Consumer Protection Act of 1991, § 3(a), 47 U.S.C.A. § 227(b)(2). *Gomez v. Campbell-Ewald Co.*, 768 F.3d 872, 11 (9th Cir. 2014).

Ratification

76. HIA was delivered DNC requests by Plaintiff on December 9, 2023.

77. HIA was informed verbally of Plaintiff's DNC request to their employee Defendant Jones on December 9, 2023.

78. HIA was fully aware of Plaintiff's desire to not be called and solicited for their services.

79. Defendant HIA was consciously calling Plaintiff's with full awareness the phone calls were violating the TCPA and that Plaintiff had delivered multiple DNC requests to Defendant Freedom.

80. Defendant HIA was consciously calling Plaintiff's with full awareness the they did not maintain an internal do not call policy as required by the TCPA and that Plaintiff had requested it.

81. Defendant HIA was consciously calling Plaintiff's with full awareness the they did not place Plaintiff on their internal do not call list as required by the TCPA and that Plaintiff had requested it because they did not maintain one.

82. Even when a party is not directly liable, it may nevertheless be vicariously liable "under federal common law principles of agency for TCPA violations committed by third-party telemarketers." *DISH Network*, 28 FCC Rcd. at 6584. These agency principles include "not only formal agency [or actual authority], but also . . . apparent authority and ratification." *Id.*; see also *FDS Rest., Inc. v. All Plumbing, Inc.*, 241 A. 3d 222, 238n. 24 (D. C. 2020) (noting that a different provision of the TCPA, 47 U.S.C. § 217, creates vicarious liability for the acts of an agent). The plaintiff must establish the agency relationship between the defendant and the third-party caller to establish vicarious liability. See *Henderson v. United*

1 *Student Aid Funds, Inc.*, 918 F.3d 1068, 1072-73 (9th Cir. 2019), as amended on denial of reh'g
 2 and reh'g en banc (May 6, 2019) (citing *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 878 (9th
 3 Cir. 2014), aff'd, 577 U.S. 153 (2016), as revised (Feb. 9, 2016)).

4 **The TCPA Prohibits All Automated Calls to Protected Numbers**

5 83. The TCPA makes it unlawful "to make any call (other than a call made for
 6 emergency purposes or made with the prior express consent of the called party) using an
 7 automated telephone dialing system or an artificial or prerecorded voice ... to any
 8 telephone number assigned to a ... paging service, cellular telephone service, specialized
 9 mobile radio service, or other radio common carrier service, or any service for which the
 10 party is charged for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

11 84. Congress singled out these services for special protection because Congress
 12 realized their special importance in terms of consumer privacy (as is the case with cellular
 13 phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356, (2020) (Gorsuch, J.
 14 & Thomas, concurring in part and dissenting in part).

15 85. According to findings by the Federal Communications Commission ("FCC"),
 16 which is the agency Congress vested with the authority to issue regulations implementing
 17 the TCPA, such messages are prohibited because, as Congress found, automated or
 18 prerecorded messages are a greater nuisance and invasion of privacy than live ones, are
 19 costly, and are inconvenient.

20 86. The TCPA provides a private cause of action to persons who receive calls in
 21 violation of 47 U.S.C. § 227(b)(1)(A). 47 U.S.C. § 227(b)(1)(3).

22 87. These causes of action apply to users of any of four protected services (pager,
 23 cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch system], or
 24 another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or any service,
 25 including residential, VoIP, and landline services, for which the called party is charged:
 26 *Lynn, Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md. 2013).

1 88. "Non-Emergency pre-recorded voice or autodialed calls to the destinations
2 enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express consent
3 of the called party."

4 89. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone
5 solicitation to ... [a] residential telephone subscriber who has registered his or her
6 telephone number on the National Do-Not-Call Registry of persons who do not wish to
7 receive telephone solicitations that is maintained by the Federal Government" and defines
8 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of
9 encouraging the purchase or rental of, or investment in, property, goods, or services, which
10 is transmitted to any person...": U.S.C. § 227(f)(15).

11 90. The FCC also recognized that "wireless customers are charged for incoming
12 calls whether they pay in advance or after the minutes are used": In re Rules and
13 Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278,
14 Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (2003).

15 91. In 2013, the FCC required prior express written consent for all autodialed or
16 prerecorded telemarketing calls ("robocalls") to wireless numbers and residential lines.

17 Specifically, it ordered:

18 [A] Consumer's written consent to receive telemarketing robocalls must be signed
19 and be sufficient to show that the consumer: (1) received "clear and conspicuous
20 disclosure" of the consequences of providing the requested consent, i.e., that the
21 consumer will receive future calls that deliver prerecorded messages by or on behalf
22 of a specific seller; and (2) having received this information, agrees unambiguously to
23 receive such calls at a telephone number the consumer designates. In addition, the
24 written agreement must be obtained "without requiring, directly or indirectly, that
25 the agreement be executed as a condition of purchasing any good or service."

26 92. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,
27 27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

28 93. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several delivery
restrictions. It states, "No person or entity may ... [e]xcept as provided ... initiate any
telephone call ... using an automatic telephone dialing system or an artificial or prerecorded
voice."

1 94. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: "emergency
2 telephone line," "guest room or patient room of a hospital, health care facility, elderly
3 home, or similar establishment," and/or "cellular telephone service." 47 C.F.R. §
4 64.1200(a)(2) further prohibits entities from "initiat[ing], or caus[ing] to be initiated, any
5 telephone call that includes or introduces an advertisement or constitutes telemarketing,
6 using an automatic telephone dialing system or an artificial or prerecorded voice, to any of
7 the lines or telephone numbers described... "

8 95. The National Do-Not-Call Registry allows consumers to register their telephone
9 numbers and thereby indicate their desire to not receive telephone solicitations at those
10 numbers: 47 C.F.R. § 64.1200(c)(2).

11 96. A listing on the Registry "must be honored indefinitely, or until the registration
12 is cancelled by the consumer or the telephone number is removed by the database
13 administrator": *Id.*

14 97. The TCPA and implementing regulations prohibit the initiation of telephone
15 solicitations to residential telephone subscribers whose numbers are on the Registry and
16 provide a private right of action against any entity making those calls or "on whose behalf"
17 such calls are promoted: 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

18 98. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for
19 telemarketing purposes to a residential telephone subscriber unless such person or entity
20 has instituted procedures for maintaining a list of persons who request not to receive
21 telemarketing calls made by or on behalf of that person or entity." It goes on to establish
22 specific "minimum standards":
23

24 (1) "Persons or entities making calls for telemarketing purposes must have a
25 written policy, available upon demand..."

26 (2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and
27 trained in the existence and use of the do-not-call list."

28 (3) "If a person or entity making a call for telemarketing purposes ... receives a
request ... not to receive calls from that person or entity, the person or entity
must record the request and place the subscriber's name ... and telephone
number on the do-not-call list at the time the request is made ... must honor a
residential subscriber's do-not-call request within a reasonable time from the

date such request is made."

(4) "A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted."

(5) "A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls."

Claims

Count One

99. Plaintiff incorporates the foregoing allegations as fully set forth herein.

100. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute violations of the TCPA, 47 U.S.C. § 227, by sending calls, except for emergency purposes, to Plaintiff's telephone which is assigned to a cellular telephone service using an ATDS.

101. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling him to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop his illegal calling campaign.

102. Plaintiff is also entitled to and does seek injunctive relief prohibiting Defendants and/or his affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or sending messages, except for emergency purposes, to any number using an artificial or prerecorded voice in the future.

103. Plaintiff is entitled to an award up to \$1500 in damages for each knowing and willful violations of 47 U.S.C. § 227(b)(3)(B)

104. Defendants' violations were willful and/or knowing.

Count Two

105. Plaintiff incorporates the foregoing allegations as fully set forth herein.

107. As a result of their unlawful conduct, Defendants invaded Plaintiff's personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. § 227(c)(3)(F) entitling him to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop his illegal calling campaign.

109. Defendants' violations were willful and/or knowing.

Violation of the Florida Telephone Solicitation Act,

110. Plaintiff incorporates the foregoing allegations as fully set forth herein.

111. It is a violation of the FTSA to “make or knowingly allow a telephonic sales

112. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(i).

113. Defendants failed to secure prior express written consent from Plaintiff.

114. In violation of the FTSA, Defendant made and/or knowingly allowed telephonic sales calls to be made to Plaintiff without Plaintiff's prior express written consent.

115. Defendants made and/or knowingly allowed the telephonic sales calls to Plaintiff to be made utilizing an automated system for the selection or dialing of telephone numbers.

116. As a result of Defendants' conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff was harmed and are each entitled to a minimum of \$500.00 in damages for each violation. *Id.*

Relief Sought

WHEREFORE, Plaintiff requests the following relief:

A. Injunctive relief prohibiting Defendants from calling telephone numbers using an artificial or prerecorded voice and/or ATDS.

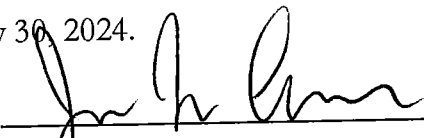
B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(b)(3).

C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).

D. Because of Defendants' violations of the FTSA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to Fla. Stat. § 501.059.

E. Such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this May 30, 2024.


Jason Crews